

LAW OFFICES
KOTEEN & NAFTALIN
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036

BERNARD KOTEEN
ALAN Y. NAFTALIN
RAINER K. KRAUS
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
HERBERT D. MILLER, JR.
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
M. ANNE SWANSON
CHARLES R. NAFTALIN

GREGORY C. STAPLE
OF COUNSEL

RECEIVED

JAN 13 1994
TELEPHONE (202) 467-5700
TELECOPY (202) 467-5915
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
CABLE ADDRESS "KOBURT"

January 13, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: GEN Docket No. 90-314,
RM-7140, RM-2175, RM-7618

Dear Mr. Caton:

Transmitted herewith, on behalf of the National Rural Telecom Association, are an original and nine (9) copies of its reply comments in the above-referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Margot Smiley Humphrey
Margot Smiley Humphrey

No. of Copies rec'd
List A B C D E

CTG

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

JAN 13 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
 Amendment of the Commission's)
 Rules to Establish New Personal)
 Communications Services)

GEN Docket No. 90-314

RM-7140, RM-7175, RM-7618

REPLY COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION

The National Rural Telecom Association (NRTA), by its attorneys, files this reply to oppositions supporting retention or expansion of the 10 MHz PCS eligibility restriction for those with attributable cellular interests, particularly as such restrictions relate to local exchange carriers (LECs) that serve rural areas.

NRTA is an association of approximately 300 local exchange carriers that borrow under Rural Electrification Administration (REA) and Rural Telephone Bank (RTB) programs. These programs help NRTA's members to fulfill the statutory purpose and loan condition of assuring service to "the widest practicable number of rural users." See 7 U.S.C. §§ 921, 922. NRTA has been and plans to continue as an active participant in both this docket and the related proceeding implementing the competitive bidding provisions of the Budget Reconciliation Act.

Cablevision Systems Corporation (CSC) objects (pp. 1-2) to requests for a "designated entity" exception to cellular

restrictions and other requests to relax restrictions on holding interests in cellular and PCS systems. It thinks (p. 4) the Commission correctly found that the potential for undue market power over PCS providers by those with cellular interests outweighs the benefit of early PCS development by those with cellular experience. However, with respect to rural telephone companies, CFC's argument cannot be reconciled with the controlling legislation.

NRTA instead agrees with the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) (p. 1) that the cellular eligibility rules should not apply to rural telephone companies¹ because of the specific provisions in the Omnibus Budget Reconciliation Act of 1993 (Budget Act).² In that recent legislation, Congress expressly sought to bring the benefits of new technologies such as PCS to "the public,

¹ NRTA has urged the Commission to define rural telephone company as a local exchange carrier that provides service to a study area that is not within an urbanized area and has no community with 10,000 or more inhabitants or a local exchange carrier with no more than, preferably, 50,000 access lines. Reply Comments of the National Rural Telecom Association, PP Docket No. 93-253, filed November 30, 1993; see, also, Comments of the National Rural Telecom Association, PP Docket No. 93-253, filed November 10, 1993.

² Others also support and explain the need for an exemption for rural LECs from the 10 MHz limitation for all or some types of attributable cellular interests in their service areas. See, e.g., Citizens Utilities Company, Opposition to Petitions for Reconsideration, filed Dec. 29, 1993, pp. 5-6; United States Telephone Association Opposition to Petition for Reconsideration, filed Dec. 30, 1993, pp. 5-6 (current rule has a "particularly detrimental impact on many small and mid-sized exchange carriers" (p. 5)).

including those residing in rural areas."³ It identified as one means of "ensuring that new and innovative technologies are readily accessible to the American people..." widely disseminating licenses to a short list of preferred applicant categories, including "rural telephone companies."⁴ Congress also required consideration of bidding preferences for rural telephone companies and the other preferred categories.⁵

Neither the Budget Act nor its legislative history suggests that Congress intended to exclude rural telephone companies with cellular interests from preferred consideration. Similarly, an assumption that the cellular "market power" of small LECs with non-controlling and passive cellular interests would "outweigh" the statutory intent to encourage prompt service to rural areas can find no support in the legislation or supporting materials. Accordingly, the Commission should exempt rural telephone companies from the 10 MHz cellular restriction and pursue the spectrum allocation goals Congress laid out for the Commission in the Budget Act.

As the Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO) and PMN, Inc. explain in their respective oppositions, it is particularly inconsistent with the Budget Reconciliation Act to exclude rural telephone

³ Section 309(j)(3)(A) added to the Communications Act by Section 6002 of The Budget Act (Section 309 Amendments).

⁴ Section 309 Amendments at § 309(j)(3)(B).

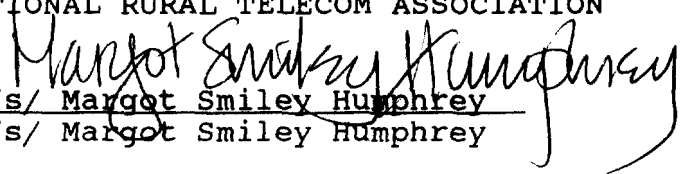
⁵ Section 309 Amendments at § 309(j)(4)(D).

For the foregoing reasons, NRTA urges the Commission to modify its decision in order to carry out the will of Congress that rural telephone companies have a realistic opportunity to bid for PCS spectrum and that the rural public have a realistic opportunity to receive PCS service. To fulfill the legislative intent, the Commission should not apply restrictions based on cellular ownership to rural telephone companies.

Respectfully submitted,

NATIONAL RURAL TELECOM ASSOCIATION

By:


/s/ Margot Smiley Humphrey
/s/ Margot Smiley Humphrey

KOTEEN & NAFTALIN
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700

Its Attorneys

January 13, 1994

CERTIFICATE OF SERVICE

I, Richard D. Massie, a secretary in the law firm of Koteen & Naftalin, do hereby certify that I have this date caused the foregoing to be sent by first class United States Mail, postage prepaid, to the following:

Charles D. Ferris
James A. Kirkland
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
Suite 900
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(Attorneys for Cablevision
Systems Corporation)

Lisa M. Zaina
General Counsel
Organization for the
Protection and
Advancement of Small Telephone
Companies
21 Dupont Circle, N.W.,
Suite 700
Washington, D.C. 20036
(Attorneys for OPASTCO)

M. John Bowen, Jr.
John W. Hunter
McNair & Sanford, P.A.
1155 Fifteenth Street, N.W.
Washington, D.C. 20005
(Attorneys for PMN, Inc.)

Kathy L. Shobert
Director, Federal Regulatory
Affairs
888 16th Street, N.W.
Suite 600
Washington, D.C. 20006
(Attorneys for GCI)

Ellen S. Deutsch
Jacqueline R. Kinney
P.O. Box 340
8920 Emerald Park Drive
Suite C
Elk Grove, CA 95759-0340
(Attorneys for Citizens
Utilities Company)

Martin T. McCue
Linda Kent
United States Telephone
Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005-2136
(Attorneys for USTA)

By: /s/ Richard D. Massie
 /s/ Richard D. Massie

January 13, 1994